

REMARKS/ARGUMENTS

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This is in response to the official action dated February 14, 2008. Reconsideration is respectfully requested. Claims 1-4, 7-9, 11-13 were canceled and claims remaining claims 5, 6, 10 and 14 were amended.

Claim Objections

Claim 12 is objected because of the informalities. Claim 12 has been canceled and therefore, the objection is moot.

Claim Rejections - 35 USC § 102

Claims 8, 10 and 12-14 were rejected under 35 U.S.C. 102(b) as being anticipated by Pons Pons (U.S. Patent No. 4,425,302). Claims 8, 12 and 13 were canceled. Of the remaining claims, claims 10 and 14 were amended to overcome the rejection. Since claim 10 is dependent on claim amended claim 6, it will be discussed below in the context of claim 6. Concerning Claim 10, applicants submits that claim 10 is dependent from claim 6, which stand amended and which is discussed below.

Concerning claim 14, it is respectfully submitted that this claim is not anticipated. Anticipation requires identity of invention. *See* MPEP 2131. *See also* *Glaverbel Societe Anonyme v.*

Northlake Mktg. & Supply, 33 USPQ2d 1496, 1498 (Fed. Cir. 1995). Each and every element recited in a claim must be found in a single prior art reference and arranged as in the claims. *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978); *Lindemann Maschinenfabrik GMBH v.*

American Hoist and Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984). There must be no differences between what is claimed and what is disclosed in the prior art reference. *In re Kalm*, 154 USPQ 10, 12 (CCPA 1967.) Moreover, it is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference. *Ex parte Levy*, 17 USPQ2d 1461, 1462 (BPAI 1990).

Claim 14 claims a method of transmitting an active substance in a vapor phase into an atmosphere, comprising the steps of incorporating the active substance into a sublimable carrier substance, *adding the carrier substance to a tube adapted to be mounted essentially vertically*,

such that it comprises upper and lower ends, the tube being sealed at the lower end by an essentially horizontal surface that is in heat-conducting contact with an electrical heating element, the tube additionally comprising at the lower end thereof a vent adapted to release sublimed material; and causing the heating element to heat and thus causing sublimation of the carrier substance at its interface with the horizontal surface, which sublimed substance then enters the atmosphere via the vent.

Nowhere does Pons Pons disclose a carrier substance which was added to a tube, as applicant claims. Nowhere does Pons Pons have an arrangement for sealing the lower end of the tube (because there is no tube, but merely a bar of sublime material). Thus, the bar in Pons Pons merely sits on the slide 4. There is also no surface of the bar that is in heat-conducting contact with an electrical heating element as applicants claim, Pons Pons merely provides a heating device adjacent to the bar. In addition, Pons Pons does not provide a vent situated at a lower end of the tube containing the sublime material. Thus, an applicant includes certain steps which are entirely missing from Pons Pons. For these reason, claim 14 is not anticipated by Pons Pons.

Claim Rejections - 35 USC § 103

Claims 5, 8, and 13 were rejected as being obvious over Patel et al. (US Patent No. 5,647,052) in view of Pons Pons (U.S. Patent No. 4,425,302). Claim 8 and 13 were canceled, claim 5 is dependent on claim 6, which is an independent claim. Thus, amended claim 6 will be discussed below.

Claim 6 was rejected as being obvious over Patel et al. in view of Pons Pons as applied to claim 13, and further in view of Spector. When an obviousness rejection is made over a combination of references, it must also have been obvious to a person of ordinary skill to combine the references as suggested by the Examiner. Until recently, obviousness was typically established by the Examiner providing some teaching, suggestion or motivation for the combination.

Recently, the Supreme Court in *KSR, Int'l Co. v. Teleflex, Inc.*, 550 U.S. ____ (2007) clarified the basis for obviousness rejections by emphasizing that there need not necessarily be any teaching, suggestion or motivation for the combination. Instead, an obviousness rejection is proper so long as the combination is no more than the predictable use of known elements according to their established functions, and there is a reason to combine the known elements.

Applicant submits that claim 6 is patentable. Claim 6 is now amended to be the only independent apparatus claim. Patel discloses a volatile substance dispenser which provides an indication of the dissipation of a quantity of volatile substance by changing an electrical signal level after a time duration corresponding to an expected period time for the quantity of volatile substance to disseminate. A heat source causes the volatile substance to disseminate into the atmosphere. The dissipation may be indicated by a light bulb burning out where the light bulb is a limited duration bulb with a lifetime that corresponds to the quantity of volatile substance. The dispenser may be disposable and may also serve as a night light.

None of the elements of amended claim 6 are present in Patel: Patel simply describes a device which has a similar function to applicant's invention, but the apparatus of Patel is entirely differently designed. Patel does not disclose an apparatus including a sublimable carrier substance disposed on the substantially horizontal surface of the heating element so that a subliming effect on only part of the total sublimable carrier substance takes place. Further, Patel does not disclose a sublimable carrier substance which is contained within a tube adapted to be removeably mounted substantially vertically in the support body. Instead, Patel provides a volatile substance in a tray which is placed on a cover plate, which in turn is disposed above an electrical conductor. There is no tube containing a subliming substance disclosed in Patel, which tube is sealed at a bottom section of the tube. Further, there is no vent at a lower end of the tube for releasing of sublimed substance in the atmosphere.

The secondary references of Pons Pons and Spector can not cure the deficiencies provided by Patel. A person being skilled in the art would not have any reason to redesign Patel with features found in an entirely differently structured device of Pons Pons and Spector and arrive at applicant's invention as claimed in independent claim 6. The obviousness rejection is not proper because the combination is not a predictable use of known elements according to their established functions, and there is no reason to combine the known elements. Thus, applicants submit, that amended independent claim 6 is patentable and claim 5, which is now dependent on claim 6, is also patentable. In view of the present amendment, the rejection should be withdrawn.

CONDITIONAL PETITION FOR EXTENSION OF TIMERECEIVED
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If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,
NORRIS McLAUGHLIN & MARCUS, P.A.

By Christa Hildebrand
Christa Hildebrand
Reg. No. 34,953
875 Third Avenue - 18th Floor
New York, New York 10022
Phone: (212) 808-0700
Fax: (212) 808-0844
Facsimile: (212) 808-0844